

PD9 Exh E

From: David Ko
Sent: Friday, April 19, 2019 11:04 AM
To: Knapp, Timothy; 2804 Discovery, MDL; Weinberger, Peter H.; Andrea Bierstein; Erin Dickinson
Cc: xALLDEFENDANTS-MDL2804-Service@arnoldporter.com
Subject: RE: Professor Cutler

Tim,

Thank you for confirming April 26 and 27 for Professor Cutler's deposition. So the record is entirely clear, and to correct your misrepresentation that "much of Professor Cutler's backup data that was due nearly a month ago was produced just on Tuesday" – plaintiffs did in fact produce all of Prof. Cutler's reliance materials and the vast majority of the backup data to his report on March 25. As you know, the only data that was not produced was the de-identified mortality data from 2005-2016 for counties in which there were less than 10 deaths in those years pursuant to a restriction agreement with the NCHS. Once defendants requested this data, plaintiffs provided defendants with a process to obtain the data on April 10. One week later, after numerous back and forth, defendants agreed to this process, signed a revised DUA, and we turned over the de-identified data that day.

Furthermore, the data we provided to your consultants comprised of six files totaling 250 MB. By comparison, we produced 350 files totaling 50 MB on March 25 in connection w/ Professor Cutler's report. To be clear, the six files subject to the de-identification issue I discussed with your colleagues throughout the past week represent .005% of the entire dataset we produced. It is therefore entirely false for you to say that "much of Professor Cutler's backup data ... was just produced just on Tuesday (4/16)."

Regarding your request for the source data for Table J.1 of the Cutler report, there is no backup data to produce. As the Cutler report makes clear (see para. 6 of Appx J) he is relying on other reports that provide the basis for the percentages that appear in that paragraph. In particular, the percentages are set forth in the McCann report and his supplements (see Table A of 4/3 McCann supplement) and also identified in section III of the Rafalski report. Thus, to the extent you are requesting code or backup data, it can be found in the reliance materials of the McCann report. In order to make the record perfectly clear, we will provide a clarification to Appx J of the Cutler report.

I trust this email resolves your concerns. If you need any further clarification, feel free to call me.

Thank you.

David Ko
Attorney - Complex Litigation
Keller Rohrback L.L.P.

Phone: (206) 428-0562
Email: dko@kellerrohrback.com
<http://www.krcomplexlit.com>

CONFIDENTIALITY NOTE: This e-mail contains information belonging to the law firm of Keller Rohrback L.L.P., which may be privileged, confidential and/or protected from disclosure. The information is intended only for the use of the individual entity named above. If you think that you have received this message in error, please e-mail the sender. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.

From: Knapp, Timothy <tknapp@kirkland.com>

Sent: Friday, April 19, 2019 7:38 AM

To: 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>; David Ko <dco@KellerRohrback.com>; Weinberger, Peter H. <pweinberger@spanglaw.com>; Andrea Bierstein <abierstein@simmonsfirm.com>; Erin Dickinson <ekd@cruegerdickinson.com>

Cc: xALLDEFENDANTS-MDL2804-Service@arnoldporter.com

Subject: Professor Cutler

Counsel,

I write regarding two issues related to the report of Professor Cutler. First, defendants have been unable to find the source data for his table J.1 - Percent of Shipments Attributable to Distributors' Misconduct (see screenshot below). Professor Cutler stated in his report that the data was provided by counsel and would be set forth in reports disclosed on April 15. We have been unable to find support in those reports or their supplements. Please provide the support for this table immediately.

Second, without prejudice to Defendants' pending motion to strike and reserving all rights to request later dates pending the resolution of the Table J.1 data issue and any other continuing data or reliance material issues, Defendants will take the deposition of Professor Cutler on April 26 and 27 at Robbins Kaplan in Boston, MA. We would agree to April 26 and 27 while reserving all rights given that much of Professor Cutler's backup data that was due nearly a month ago was produced just on Tuesday (4/16) and we still do not have the source data in Table J.1.

Regards,
Tim

6. Table J.1 reports the data on the share of shipments for which the distributors are liable that have been provided to me by counsel and that I understand will be set forth in reports disclosed on April 15, 2019.

Table J.1: Percent of Shipments Attributable to Distributors' Misconduct

Year	Percent of Shipments Attributable to Distributors' Misconduct
1997	49.9%
1998	67.0%
1999	64.4%
2000	64.7%
2001	63.0%
2002	59.8%
2003	67.3%
2004	64.5%
2005	72.2%
2006	73.1%
2007	76.4%
2008	78.4%
2009	78.7%
2010	79.2%
2011	80.0%
2012	82.5%
2013	81.7%
2014	82.7%
2015	83.4%
2016	83.5%

Timothy W. Knapp

KIRKLAND & ELLIS LLP
 300 North LaSalle, Chicago, IL 60654
 T +1 312 862 7426
 F +1 312 862 2200

timothy.knapp@kirkland.com

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to postmaster@kirkland.com, and destroy this communication and all copies thereof, including all attachments.